

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROLAND ANTHONY LONGGREAR,

Petitioner,

v.

Case No. 07-10455

Honorable Lawrence P. Zatkoff

CINDI CURTIN,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR JUDGMENT BY DEFAULT

Petitioner Roland Anthony Longgrear, a state prisoner, presently confined at the Oaks Correctional Facility in Manistee, Michigan, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Before the Court now is Petitioner's "Motion for Judgment By Default" (Docket # 13). Petitioner seeks a default because he alleges that Respondent has failed to timely file the necessary Rule 5 materials. This contention is without merit.

On February 1, 2007, this Court issued an order requesting Respondent to answer Petitioner's petition by July 30, 2007 (Docket # 4), which she did. (*See* Docket # 7.) Subsequently, on September 27, 2007, Respondent filed the necessary Rule 5 materials (Docket #12). Thus, Petitioner's motion is moot. Furthermore, a default judgment is generally unavailable in a habeas corpus proceeding on the ground that government officials failed to file a timely response to the petition. *See, e.g., Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970).

Accordingly,

IT IS ORDERED that Petitioner's motion is **DENIED WITH PREJUDICE**.

S/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: July 28, 2008

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on July 28, 2008.

S/Marie E. Verlinde

Case Manager

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